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ABSTRACT

Described in this pamphlet are Colorado parents' educational rights under federal and state special education rules and regulations. It addresses: (1) free appropriate public education and the termination of such; (2) required prior notice to parents if there is a proposed change or refusal to change a child's special education program; (3) required written parental permission before a child is initially evaluated or re-evaluated and placed in special education; (4) the ability of parents to seek an independent educational evaluation; (5) educational surrogate parents; (6) transfer of rights at age of majority; (7) the rights of parents to see or request copies of a child's school records and to have them changed or removed; (8) determination of appropriate disciplinary procedures for students with disabilities; (9) the ability of parents to seek mediation if they disagree with special education testing, services, or placement; (10) the ability of parents to file a written complaint if a school district/agency is violating special education requirements; (11) impartial due process hearings; and (12) private school placements. (CR)

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ED 438 640

COLORADO DEPARTMENT OF EDUCATION

EDUCATIONAL RIGHTS OF PARENTS

AUGUST 1999

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An Explanation of Procedural Safeguards Available to Parents of Children with Disabilities

Educational Rights Of Parents

Under Provisions of the Individuals with Disabilities Education Act (IDEA) and the Rules for the Administration of the Exceptional Children's Educational Act (ECEA)

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Colorado Department of Education
Special Education Services Unit

August 1999

INTRODUCTION

Described in this pamphlet are parent educational rights required under federal and state special education rules and regulations. It is important that you, as a parent, understand your rights in special education relating to your child.

School staff are available to assist you in understanding these rights and are available on request to provide you with any further explanation. If needed, the school will provide an interpreter or translation to help assure that you understand.

If you have any questions or would like further information please contact:

Name _____ Telephone _____

FREE APPROPRIATE PUBLIC EDUCATION

You have a right to participate in meetings with respect to the:

- identification,
- evaluation,
- eligibility,
- Individualized Education Program (IEP),
- placement, and
- the provision of a free appropriate public education (FAPE) for your child.

Your child's general education teacher should be involved with the IEP development.

An eligible child with a disability has a right to receive a free appropriate education that is outlined as an Individualized Education Program. The IEP is meant to address your child's unique needs.

TERMINATION OF FAPE

A student's right to FAPE under special education law ends at the end of the semester in which the student turns 21, or when the student has graduated with a regular high school diploma or GED. A student's right to FAPE is not terminated by any other kind of graduation or completion certificate.

A student's right to FAPE under special education law would also end if the IEP team determines that special education services are no longer needed. If a parent does not agree that their son or daughter should graduate with a regular high school diploma, or that their son or daughter no longer needs special education services, they are entitled to procedural due process to resolve the disagreement.

PRIOR NOTICE TO PARENTS

The school will notify you by letter if they are proposing to change or refuse to change your child's special education program. The notice must be easily understandable. You must also receive notice of special education meetings about your child within a reasonable time so you can attend.

The school district must provide you with written prior notice before each time it proposes or refuses to initiate or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education to your child. The notice must include:

1. a full explanation of all of the procedural safeguards and state complaint procedures available to you in your native language;
2. a description of the action proposed or refused by the school district;
3. an explanation of why the school district proposes or refuses to take the action;
4. a description of any other options the school district considered and the reasons why those options were rejected;
5. a description of each evaluation procedure, test, record, or report the school district used as a basis for the proposed or refused action;
6. a description of any other factors which are relevant to the school's proposal or refusal;
7. a statement that you, as a parent of a child with a disability, have protection under the procedural safeguards of special education law, and the means by which a copy of the procedural safeguards can be obtained; and
8. sources for you to contact to obtain assistance in understanding the provisions of special education.

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If you need assistance in understanding any of the procedural safeguards, or anything else relating to your child's education, please contact the Director of Special Education of your local school district.

A copy of the procedural safeguards will be provided to you at a minimum:

- upon the initial referral for evaluation,
- upon each notification of an IEP meeting,
- upon re-evaluation of your child, and
- upon receipt by the school district of a request for a due process hearing.

The procedural safeguards notice must be written in your native language or other mode of communication, unless it is clearly not feasible to do so, and written in an easily understandable manner. The school district must make sure that you understand your special education rights, ensure that this will be translated to you if necessary, and document their process of providing you these rights.

PARENT CONSENT

Your written permission is required before your child is initially evaluated, re-evaluated, and placed in special education.

The school must obtain your informed consent before conducting a pre-placement evaluation, initial placement, and re-evaluation of your child in a program providing special education and related services. However, in cases of re-evaluation, the school district does not have to have your consent if it can demonstrate that it has taken reasonable measures to obtain your consent and you failed to respond. The school district may require your consent for other services and activities.

Your consent is not required before reviewing the existing data as part of an evaluation or a re-evaluation; or before giving a test or other evaluation that is given to all children unless, before they give a test or evaluation, they have asked for consent from all parents.

Information regarding consent will be written in your native language or other mode of communication. You should understand:

- the reason written consent is being asked,
- that giving your consent is voluntary, and
- that you can revoke your consent at any time. (If you revoke your consent, that revocation is not retroactive [i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked]).

Your consent should identify any records to be released, to whom they will be released, and for what purpose they will be released. Giving your written consent also means that you understand and agree that the school will perform the activities for which you have given your consent.

If you refuse consent for initial evaluation or a re-evaluation, the school district may continue to seek an evaluation by using due process hearing procedures. Pending any due process hearing decision, your child would remain in his or her present educational placement, unless you and the school district agree otherwise. A school district may not use your refusal to consent to one service or activity to deny you or your child any other service, benefit, or activity of the school district, except as may be required by special education law. Also, you have a right to appeal the decision of a due process hearing officer.

INDEPENDENT EDUCATIONAL EVALUATION

If you disagree with the school's evaluation of your child, you can request an independent evaluation, conducted by someone not employed by your school district.

If you disagree with an evaluation obtained by your school district, you have the right to obtain an independent educational evaluation of your child at public expense, unless the school can show its evaluation is sufficient. An independent educational evaluation is an evaluation conducted by a qualified examiner who is not employed by the school district. The school district will provide, upon your request, information about where an independent educational evaluation may be obtained.

Your school district may initiate a due process hearing to show that the school district's evaluation is sufficient. If it is determined, by decision of a hearing officer, that the evaluation is appropriate, you still have the right to an independent educational evaluation, but not at public expense.

If you request an independent educational evaluation, the school district may ask why you object to the public evaluation. However, the school district cannot require an explanation from you, and the school district may not unreasonably delay either providing the independent educational evaluation at public expense, or initiating a due process hearing to defend their evaluation.

If you obtain an independent educational evaluation at private expense, the results of the evaluation must be considered by the evaluation and/or planning team in any decision made with respect to the provision of a free appropriate public education for your child, and may be presented as evidence at a due process hearing regarding your child.

If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualification of the examiner, must be the same as the criteria which the school district uses when it initiates an evaluation, to the extent those criteria are consistent with your right to an independent educational evaluation. A school district may not impose additional conditions or timelines related to obtaining an independent evaluation at public expense.

EDUCATIONAL SURROGATE PARENTS

Some children do not have parents who can advocate for them in the special education process. An educational surrogate parent is someone appointed to represent the child at special education meetings.

Each school district shall have a method for determining whether a child needs an educational surrogate parent and shall ensure that an individual is assigned, through the Colorado Department of Education, to act as an educational surrogate parent for a child whenever the parents of a child are not known and/or the school district cannot, after reasonable efforts, locate the parents, or if parental rights have been terminated for that child.

The person assigned as the educational surrogate parent shall not be an employee of the state education agency, school district, or any other agency that is involved in the education or care of the child.

The educational surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child, including the provision of a free appropriate public education.

TRANSFER OF RIGHTS AT AGE OF MAJORITY

When a student reaches 21, or becomes emancipated, all special education rights transfer from the parent to the student.

All rights of parents under special education law transfer to the student when the student reaches the age of majority under state law (21 in Colorado), or earlier if the student is emancipated. These rights include, but are not limited to: consent for evaluation or re-evaluation, decisions about services and placement, and rights to special education due process procedures.

The school district must notify the student and the parent of the transfer of rights. Beginning at least one year before the student reaches the age of majority, the student's IEP must include a statement that the student has been informed of his or her rights, under IDEA, that will transfer to the student on reaching the age of majority.

STUDENT RECORDS

You have the right to see or request copies of your child's school records. If you disagree with items in the records, you can ask if they can be changed or removed.

Access to Records

The Family Educational Rights and Privacy Act (FERPA) gives rights to parents regarding their children's education records. These rights transfer to a student, or a former student, who is attending any school beyond the high school level, or who has reached age 18. Schools may still provide access to records to the parents of a student who is 18 and a dependent.

Your school district must permit you to inspect and review any education records relating to your child with respect to the identification, evaluation, and educational placement of your child, and the provision of a free appropriate public education to your child. The school district must comply with your request without unnecessary delay, and before any meeting regarding an IEP, or any hearing relating to the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education to your child, and in no case more than 45 days after your request has been made.

Your right to inspect and review education records under this section includes:

- the right to a response from the school, or other participant agency, to reasonable requests for explanations and interpretations of the records;
- your right to have your representative inspect and review the records; and
- your right to request that the school district provide copies of the records containing the information if failure to provide those copies would effectively prevent you from exercising your right to inspect and review the records.

The school may presume that you have authority to inspect and review records relating to your child unless the school district has been advised that you do not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

If any education record includes information on more than one child, you have the right to inspect and review the information relating to your child or to be informed of that specific information.

The school district must provide you, on request, a list of the types and locations of education records collected, maintained, or used by the school district.

Fees for Searching, Retrieving, and Copying Records

The school may not charge a fee to search for or to retrieve information in your child's educational records, but may charge a fee for copies of records which are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

Record of Access

The school must keep a record of those persons or organizations obtaining access to your child's education records, including the name of the person or organization, the date access was given, and the purpose for which the person or organization was authorized to use the records. The school does not have to keep a record of access by eligible parents or students, or authorized school employees.

Amendment of Records at Parent's Request

If you believe that information in your child's education record is inaccurate, misleading or violates the privacy rights, or other rights of your child, you may request the school district to amend the information. The school district must decide whether to amend the information within a reasonable period of time of receipt of your request. If the school district decides to refuse to amend the information, it must inform you of the refusal and of your right to a hearing.

The school district shall provide an opportunity for a hearing (under the Family Educational Rights and Privacy Act) to challenge information in the education records to ensure that the information is not inaccurate, misleading, or otherwise in violation of the privacy rights, or other rights of the student.

If, as a result of the hearing, the school district decides that the information is inaccurate, misleading, or otherwise in violation of the privacy rights, or other rights of the student, it must amend the information and inform you in writing of the amendment.

If, as a result of the hearing, the school district decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy rights, or other rights of your child, it must inform you of the right to place in the records a statement commenting on the information or giving any reasons for disagreeing with the decision of the school. Any explanation placed in the student's records must be maintained by the school as part of the records of the student as long as the record or contested portion is kept by the school. If the records of the student or the contested portion is disclosed by the school district to any person or organization, the explanation must also be disclosed to the person or organization.

DISCIPLINE

Discipline is an important part of learning. The IEP Team, including the parent, needs to determine appropriate disciplinary procedures for students with disabilities.

Discipline issues relating to students with disabilities are extensive. Additional information can be obtained from your school administrator or IEP Team.

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A free appropriate public education must be made available to all eligible children with disabilities, including children with disabilities who have been removed from school (e.g., suspended or expelled) for more than a total of ten school days in a given year.

1. After a total of 10 school days:
   The IEP team must meet to:
   - Develop a plan for conducting a functional behavioral assessment.
   - Develop a plan for completing a behavior intervention plan, including appropriate behavior interventions to address that behavior, or to review and modify an existing behavior plan.
   - Determine whether the child is receiving an appropriate education.
   - Additionally, a manifestation determination to decide whether there is a relationship between your child's disability and the behavior may need to be conducted.
2. If as the result of the manifestation determination, the IEP team, including the parent, agree either that:
   A. Services were not appropriate or if the behavior was a manifestation of your child's disability, then,
      - your child may not be removed (expelled or suspended) for more than 10 days unless one of the following circumstances applies:
        - your child was in possession of drugs or weapons, or
        - it is determined that he/she is substantially likely to injure him/herself or others (see items 6 and 7); or

   B. Your child's behavior was <u>not a manifestation</u> of his/her disability, then,
      - your child may be disciplined in the same manner as a child without a disability would be disciplined, and
      - the school district must continue providing a free appropriate public education for your child.
3. If you disagree with the determination that your child's behavior was not a manifestation of his/her disability or with any decision regarding placement, then you may request a hearing (an expedited hearing shall be arranged under these circumstances).
4. At any time, any member of the IEP team can request an IEP meeting be held to revise the behavior intervention plan. If requested, the meeting must take place.
5. If your child has been suspended or expelled for more than 10 days or has been placed in an alternative educational setting, the school district must ensure that your child has access to the general curriculum and be provided services and modifications described in his/her current IEP.
6. The IEP team, including the parent, may decide that your child should be placed in an interim alternative educational setting for up to 45 days if your child:
   - brings a weapon to school or a school function,
   - is in possession of or using illegal drugs, and/or
   - sells or solicits the sale of a controlled substance while at school or a school function.
7. If the school district believes that your child's behavior is substantially likely to result in injury to himself or herself, the school district may ask a hearing officer to conduct an expedited hearing to consider a change of educational placement. The hearing officer must consider the following factors:
   1. the likelihood that maintaining the current placement will result in injury to your child or others;
   2. the appropriateness of the child's current placement;
   3. whether the school district has made reasonable efforts to minimize the risk of harm in your child's current placement, including the use of supplementary aids and services; and
   4. the interim alternative educational setting that is proposed by school personnel.

The school district may report a crime committed by your child with a disability to appropriate authorities. Law enforcement officers and officers of the court will use federal and state laws to determine appropriate actions. Copies of the special education and disciplinary records of your child will be provided to the appropriate authorities to the extent permitted by the Family Educational Rights and Privacy Act.

MEDIATION

You might disagree with the special education testing, services or placement for your child. You can try to resolve your disagreements by requesting mediation, which is a free service. A mediator is a neutral person, not employed by the school district, who assists you and the school in resolving differences. You may also request a due process hearing. Please have the school explain the process before you make a final decision.

There might be times when you and the school district disagree on important issues regarding your child's education. If agreement cannot be reached, you have the right to request an impartial mediator to help you and the school reach a mutually agreeable solution.

- Both you and the school district must agree to mediation.
- Mediation is conducted by a qualified, impartial mediator, who is trained in effective mediation techniques.
- Mediation is a service that is available to you at no cost, and at a minimum must be available to you when you request a due process hearing.
- Mediation cannot be used to delay or deny your right to a due process hearing or deny any other rights afforded under special education law.
- Each session in the mediation process shall be scheduled in a timely manner and shall be held at a location that is convenient to the parties in the dispute.
- Any agreement reached by the parties in the dispute in the mediation process shall be set forth in a written mediation agreement.
- Discussions during mediation are confidential and may not be used as evidence in subsequent due process hearings or civil proceedings.
- Parties to mediation may be required to sign a confidentiality pledge before the mediation process begins.

STATE COMPLAINT PROCEDURES

If you feel the school district/agency is violating special education requirements for your child, you can file a written complaint with the Colorado Department of Education to resolve the problem.

You have a right to file a written complaint with the Colorado Department of Education if you feel the school district or agency has violated a specific requirement of special education law.

The complaint must be filed in writing with the Colorado Department of Education, Federal Complaints Officer, explaining the alleged violations. The Federal Complaints Officer will have 60 calendar days after the complaint is filed to:

1. give the school district or agency an opportunity to respond to the allegations;

2. give the parent an opportunity to submit additional information about the allegations;
3. carry out an independent on-site investigation, if the Federal Complaints Officer determines that an on-site investigation is necessary;
4. review all relevant information and make an independent determination of whether a violation of special education law has occurred;
5. issue a written decision to the school district or agency and the parents of the findings, including reasons for the final decision.

The school district is obligated to implement the final decision.

The address for filing a Federal Complaint is:
Federal Complaints Officer
Colorado Department of Education
201 East Colfax, 3rd floor
Denver, CO 80203

Before filing a Federal Complaint it is advisable to call the Federal Complaints Officer at 303-866-6685.

IMPARTIAL DUE PROCESS HEARING

If an agreement cannot be reached between you and the school district, you may request a due process hearing. The hearing will be conducted by an impartial hearing officer. As a parent involved in the hearing you must be given certain rights, including the right to an appeal.

You or the school district may initiate a due process hearing regarding the school's proposal or refusal to initiate or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education to your child.

Before a hearing is initiated, you or your attorney should provide written notice (which will remain confidential), to the school district, providing the following information:
1. name of your child;
2. address of residence of your child;
3. name of the school your child is attending;
4. description of the problem(s) relating to the proposed or refused initiation or change, including related facts; and
5. a proposed resolution of the problem to the extent known and available to you.

The school district will have a form available for you to use to file the written notice. The school district may not deny you your right to a hearing for failure to provide the notice required.

The written request for a hearing should be submitted to the Director of Special education of your school district. The school district must then immediately inform the Colorado Department of Education of your request for a hearing.

When a hearing is initiated the school district shall inform you of the availability of mediation. The school district must also inform you of any free or low-cost legal or other relevant services available in the area if you or the school initiate a due process hearing. The school should also provide this information to you whenever you request it.

The hearing will be conducted by an impartial hearing officer obtained through the Colorado Department of Education. The Department maintains a list of hearing officers and statements of their qualifications. Three hearing officers' names, selected by rotation, are provided to the parent(s) and the school district and by process of elimination both parties participate in the determination of a hearing officer.

The hearing cannot be conducted by an employee of the Colorado Department of Education or school district involved with the education or care of your child, or by any person having a personal or professional interest which would conflict with his or her objectivity in the hearing.

The hearing officer should reach a decision within 45 days of your request for a hearing, unless the hearing officer determines that more time is needed.

The decision made in a due process hearing is final unless there is an appeal.

EXPEDITED DUE PROCESS HEARINGS

The Colorado Department of Education will arrange for an expedited hearing, if requested by a parent or school district, in any case where you disagree with issues of placement of your child into an interim alternative placement or in cases where you disagree with a determination that your child's behavior was not a manifestation of his/her disability.

DUE PROCESS HEARING RIGHTS

Any party to a hearing or an appeal of a hearing decision has the right to:
1. be accompanied and advised by counsel, and by individuals with special knowledge or training with respect to the problems of children with disabilities;
2. present evidence and confront, cross-examine, and compel the attendance of witnesses;
3. prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) days before the hearing;
4. obtain a written or electronic verbatim record of the hearing; and
5. obtain a copy of written or electronic findings of fact and decisions. (After deleting any personally identifiable information, the Colorado Department of Education will transmit those findings and decisions to the State advisory panel and make them available to the public.)

At least five (5) business days before a hearing, each party must disclose to all other parties all evaluations completed by that date, and any recommendations based on any evaluations that the party intends to use at the hearing. A hearing officer may bar any party that fails to comply with this disclosure rule from introducing the relevant evaluation or recommendation at the hearing unless the other party consents to its introduction.

As parents, you must be given the right to have your child present at the hearing, and the right to open the hearing to the public. Each hearing must be conducted at a time and place which is reasonably convenient to you and your child.

The record of the hearing and the findings and hearing decision must be provided to you at no cost.

ADMINISTRATIVE APPEAL OF A DUE PROCESS HEARING: IMPARTIAL REVIEW

A party may appeal to the Division of Administrative Hearings within 30 days after receipt of the impartial hearing officer's decision.

If there is an appeal, an administrative law judge shall conduct an impartial review of the hearing and shall:

1. examine the entire hearing record;
2. ensure that the procedures at the hearing were consistent with the requirements of due process;
3. seek additional evidence if necessary (if a hearing is held to receive additional evidence, the hearing rights described above apply);
4. afford the parties an opportunity for oral or written argument, or both, at the discretion of the administrative law judge, at a time and place reasonably convenient to the parties;
5. make a final and independent decision on completion of the review and mail such to all parties within 30 days of the filing or mailing of the notice of appeal; and
6. give a copy of written or electronic findings and the decision to the parties. (After deleting any personally identifiable information, the Colorado Department of Education will transmit those findings and decisions to the State advisory panel and make them available to the public.)

The administrative law judge may grant specific extensions of any of the timelines. The decision made by the administrative law judge is final, unless a party brings a civil action.

Civil Action

Any party has the right to bring a civil action in State or Federal Court. The action may be brought in any State Court of competent jurisdiction or in a U.S. District Court, without regard to the amount in controversy. In any action brought under this section, a Court shall receive the records of the administrative proceedings, hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant the relief that the Court determines to be appropriate.

Child's Status During Proceedings

Pending any administrative or judicial proceeding, unless you and the school district agree otherwise, your child must remain in his or her present educational placement. However, if the child was placed in an interim alternative educational placement, then the child would remain in the alternative placement pending the decision of the hearing officer, or until the expiration of the time for which the student was removed, whichever comes first (unless the parent and the school district agree to another placement). If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative educational setting), pending a due process proceeding, the school district may request an expedited due process hearing.

If a hearing involves an application for initial admission to public school, your child, with your consent, must be placed in the public school program until the completion of all the proceedings.

Award of Attorney's Fees

In any action or proceeding discussed above, the Court, in its discretion, may award reasonable attorney's fees as part of the cost to the parents or guardians of a child or youth with disabilities who is the prevailing party. However, neither due process hearing officers, nor the federal complaints officer, may award attorney's fees.

Attorney fees may not be awarded for any meeting of the IEP Team unless such a meeting is convened as a result of an administrative proceeding or judicial action.

PRIVATE SCHOOL PLACEMENT

If the parents of a child with a disability enroll their child in a private school without the consent of the school district, a court or due process hearing officer may require the school district to reimburse the parents for the cost of that enrollment only if the court or hearing officer finds the school district has not made a free appropriate public education available to the child, prior to enrollment, and that the private placement is appropriate.

This brochure was developed by the
Colorado Department of Education,
Special Education Services Unit,
and the
Mountain Plains Regional Resource Center.